

From: Joe Tarsha
To: Microsoft ATR,microsoftcomments@doj.ca.gov@inetgw,...
Date: 12/7/01 6:41pm
Subject: The proposed Microsoft settlements are inadequate

With great disappointment, I was dismayed to hear the terms of the announced settlements that the various states have proposed.

How did we go from a proposed Microsoft breakup to a wrist slap within the course of a year? The appeals court unanimously affirmed that Microsoft was indeed a monopoly, which is a lot farther than this court went circa 1998 when similar charges were brought re Windows 95. At that time, Microsoft received a wrist slap with a consent decree and no damages. Again, they are back in court, having aggregiously ignored the previous settlement terms.

What changed? The only thing that has happened of note is the year 2000 election. It is clear that this case is being influenced by partisan politics. The result is that the computer industry has been brought to its knees, while Microsoft continues to grow via its illegal business practices.

The most glaring aspect of the proposed settlements is the utter lack of reparations to damaged parties. I am not just talking about consumers, but competitors, employers (and their stockholders and customers, too), some of whom testified and others provided supporting background evidence and consultation to the legal team at their own expense.

The cases of Be, Inc., and Red Hat are two visible examples. As competing OS manufacturers, they suffered the most by Microsoft's multi-boot restrictions, wherein licenses were illegally tied to the exclusion of all other O.S.es. Be even made a public offer to waive the license fees to any OEM that would offer BeOS as an option, with no takers. Red Hat was only able to strike its first OEM deal only after testimony was taken and published that showed these illegal licensing deals.

Today, Red Hat is struggling, but is endorsed by partnerships with big name players IBM & Dell, and Be has recently sold off most of its assets at a deep loss to Palm, laying off the bulk of its staff, and will soon liquidate. Both had many employees, stockholders, and customers in California. Be customers will soon, if they have not already, reluctantly purchase Microsoft products because there is simply no other alternative left!

The provision that the settlement is applicable only to companies of significant size (one+ million in sales) is also a slap in the face to competition -- that means that new startups have no chance coming out of the blocks! Be and Red Hat would probably not have been beneficiaries of these terms. This is not a "level playing field".

And a time limitation of only five years means that Microsoft will go back to business as usual after that. This lawsuit alone is three years old. If a term limit is somehow necessary, it should be for fifty years or longer, to make worthwhile the long effort plaintiffs have put into this case. If the suggested term is put in place, we might as well file another lawsuit right after the settlement is signed in order to see a continued "level playing field" since obtaining justice has taken so long.

As a taxpayer and damaged party several times over, I am disgusted at the proposed settlement. After years of effort, millions of dollars spent, and all of the *proven* facts in the case established before you, that plaintiffs would settle for pennies on the dollar and a token wrist slap (yet again) is a waste of taxpayer funds. The parties directly and indirectly involved should not have conceded leadership of the suit to Justice if they were to be abandoned so close to the finish as they have been.

Justice has now shown itself to be susceptible to party politics with this drastic change in settlement terms. In my opinion, the time is ripe for States to take control of the suit if Justice does not resume its previous tack. Otherwise, it is very likely the effort will quickly fracture, and individual companies, states/localities, and citizens will have to file suits independently, further incurring cost, time, and effort in the justice system, and watering down any resulting settlement. I urge you to reject the proposed settlements and continue the suit vigorously to its logical conclusion.

The opinions expressed above are entirely my own, and not necessarily Be, Inc.'s. For further details, please contact the CEO, Jean-Louis Gasse, as he could provide significant further information, at jl@gassee.com.

Joe Tarsha
Be, Inc.
(a soon to be unemployed) I.S. Manager

Home address: 3940 Branson Drive, San Mateo, CA 94403-3609